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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VALENTIN ANDREEVICH ALEXEEV

Appeal 2016-007656
Application 14/113,251
Technology Center 3600

Before MICHAEL J. STRAUSS, JOSEPH P. LENTIVECH, and
NABEEL U. KHAN, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 1–3, 5, 8–10, and 12–14. Claims 4, 6, 7, 11, 15, and 16 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The claims are directed to electronic transactions with a mobile communications devices via encoded acoustic signals. Claim 5, reproduced below with disputed limitations emphasized in *italics*, is representative of the claimed subject matter:

5. A method for exchanging information with an automated information system comprising an acoustic receiver and an acoustic transmitter, the method comprising the steps of:

determining a first dataset, the first dataset comprising billing information;

encoding the first dataset comprising the billing information in a first acoustic signal;

transmitting the first acoustic signal from the acoustic transmitter;

receiving at the acoustic receiver a second acoustic signal encoded with a second dataset comprising payment instructions, the payment instructions including payment account information input by a user in response to the transmitted first acoustic signal; and

decoding the second acoustic signal to regenerate the second dataset.

REFERENCE

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Labrou

US 2007/0022058 A1

Jan. 25, 2007

REJECTIONS

The Examiner made the following rejections:

Claims 1–3, 5, 8–10, and 12–14 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception to patentable subject matter. Ans. 3, Final Act. 2–6.

Claims 5 and 12–14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Labrou.¹

DISCUSSION

Appellant’s arguments are not persuasive of Examiner error. In connection with the pending rejections, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief and concur with the conclusions reached by the Examiner addressing the pending rejections. We highlight the following for emphasis.

REJECTION UNDER 35 U.S.C. § 101

RELEVANT CASE LAW

A patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has held that this provision contains an important implicit exception for certain patent ineligible concepts: laws of nature, natural phenomena, and abstract ideas. *Alice*

¹ The rejection of claims 1–3 and 8–10 under 35 U.S.C. § 103(a) has been withdrawn. Ans. 3.

Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347, 2354 (2014); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012). To determine patentable subject matter, the Supreme Court has set forth a two part test: (1) whether the claims are directed to a patent-ineligible concept and, if so, (2) whether, when the claim elements are considered “individually and ‘as an ordered combination,’” there is an inventive concept present, *i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Alice*, 134 S. Ct. at 2355 (brackets in original) (quoting *Mayo*, 132 S. Ct. at 1294).

FINDINGS AND CONTENTIONS

Under the first step of the *Alice/Mayo* test, the Examiner finds the claims are “directed to the concept of using a mobile device (and/or other computing device) to accomplish a purchase transaction” and therefore are directed towards the abstract idea, *i.e.*, a fundamental economic practice known in commerce, banking, and/or finance. Final Act. 3–4. The Examiner further finds Appellant’s characterization of the claims as directed to “‘a method for receiving billing information and transmitting payment instructions using a mobile communications device’ is a concise description of a quintessential ‘purchase transaction’” to further support a determination the claims are directed to an abstract idea. Ans. 4 quoting App. Br. 6.

Under the second step of the *Alice/Mayo* test, the Examiner finds the claims do not include limitations that transform the invention into something significantly more than an abstract idea. Final Act. 5–6. Analyzing the limitations of the claims, the Examiner finds

The claims as a whole, do not amount to significantly more than the abstract idea itself because the claims do not effect an improvement to another technology or technical field (e.g., the field of computer coding technology is not being improved); the claims do not amount to an improvement to the functioning of an electronic device itself which implements the abstract idea (e.g., the mobile device, general purpose computer and/or computer system which implements the process are not made more efficient or technologically improved); the claims do not perform a transformation or reduction of a particular article to a different state or thing (i.e., the claims do not use the abstract idea in the claimed process to bring about a physical change[]).

Final Act. 6 citing *Diamond v. Diehr*, 450 U.S. 175 (1981) and *Parker v. Flook*, 437 U.S. 584 (1978). In connection with use of an acoustic signal to transform data, the Examiner finds there is no disclosure of “how the [use] of acoustic signals in a purchase transaction would improve anything or transform anything in the context of a purchase transaction that would amount to something ‘significantly more’ than the implementation of the abstract idea (purchase transaction) via a mobile phone.” Ans. 5.

Appellant takes issue with the Examiner’s findings under the first step of the *Alice/Mayo* test and argues the Examiner has not shown that the alleged abstract idea is similar to concepts that courts have identified as abstract. App. Br. 6. Appellant contends the claimed steps of receiving billing information and transmitting payment instructions using a mobile communication device “is not similar to a contract, legal obligation, or business relation”, and is “not foundational or basic, and therefore cannot be a *fundamental* economic practice.” App. Br. 6–7. Appellant further argues the Examiner’s characterization of the claims as directed toward using a mobile device to accomplish a purchase transaction is “an unreasonably high level of abstraction that is untethered from the language of the claims.”

Reply Br. 3 citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Appellant further contends “[c]laim 1 is also not directed to certain methods of organizing human activity, a mathematical formula, an idea of itself, or any other idea that is similar to those found by the courts to be abstract.” App. Br. 7.

Under the second step of the two-step test, Appellant contends the “the claim amount to significantly more than the abstract idea itself.” *Id.* Appellant argues the claimed implementation including how each of the steps are performed constitutes “additional elements add[ing] meaningful limitations to the idea of receiving billing information and transmitting payment instructions using a mobile communications device.” App. Br. 8. Appellant further argues “the elements of claim 1, in their totality, act in concert to *transform* data to an **acoustic signal** to improve the functionality of electronic transaction systems” and “[t]he use of **acoustic signals** for exchanging information *improves the ability of electronic transaction systems* to dynamically process transactions.” *Id.* Appellant additionally argues claim 1 “does not preempt all methods of receiving billing information and transmitting payment instructions using a mobile communications device.” *Id.*

ANALYSIS

Step One of Alice/Mayo Test

We are unpersuaded by Appellant’s’ arguments and find the Examiner did not err in concluding the claims are directed to an abstract idea. The method of claim 5 consists of the steps of

- (1) determining a first dataset, the first dataset comprising billing information (e.g., identifying a transaction number, vendor number, date, time, list of goods sold, and/or prices);
 - (2) encoding the first dataset comprising the billing information (e.g., price) in a first acoustic signal (i.e., sound signal);
 - (3) transmitting the first acoustic signal (encoding, e.g., price information) from an acoustic transmitter (e.g., using sound to transmit price information from a speaker on the POS terminal to a mobile communications device);
 - (4) receiving at an acoustic receiver (e.g., microphone on the POS terminal) a second acoustic signal (e.g., sound generated by the mobile communication device) encoded with a second dataset comprising payment instructions the payment instructions including payment account information (presumably “payment information, such as the customer’s name, credit card account number, and security code” (Spec. ¶ 47)), input by a user (e.g., of the mobile communications device) in response to the transmitted first acoustic signal; and
- decoding the second acoustic signal to regenerate² the second dataset (e.g., decoding the second acoustic signal).

² In interpreting “regenerate” as part of “decoding . . . to regenerate”, Appellant’s Specification discloses “a dataset decoded from a barcode is referred to as a regenerated dataset” (Spec. ¶ 70) and (in a circular definition) that regeneration is the same as decoding, i.e., “[t]he dataset can be *regenerated by decoding* the acoustic signal” (Spec. ¶ 79 (emphasis added)), i.e., regeneration is performed by decoding. Claim 5 does not recite a barcode. Accordingly, we interpret “decoding . . . to regenerate the second data set” as decoding the second acoustic signal to retrieve the second data set from the second acoustic signal.

App. Br. 15–16 (Claims App’x.)

The steps outlined above all relate to gathering, transmitting and receiving information to identify terms of a transaction (e.g., identifying a price) and, ostensibly, accept the terms by responding with payment instructions. We agree with the Examiner that the claims are, therefore, directed to a “purchase transaction”. Final Act. 3–5, Ans. 4–5. In particular, determining step (1) is routine data gathering (e.g., price). Encoding step (2) is a data input step associated with the gathered information, i.e., creating a signal from the information, to enable its transmission using a sound wave according to transmitting step (3). A reply message responsive to the transmitted information, i.e., payment instructions (also sent as a sound wave (i.e., “acoustic signal”)) is received by step (4), the sound wave decoded at step (5) to retrieve the reply (i.e., subjected to conventional data processing). These are all steps that are accomplished in traditional purchase or sales transactions. For example, a salesperson may identify (step (1)) and orally communicate (steps (2) and (3)) the price of an item to a customer. The salesperson would then listen for (step 4) and interpret (step 5) oral payment instructions from the customer responding to the price information.

Our reviewing court has found abstract ideas in claims directed to collecting information, analyzing it, making comparisons, and displaying (or outputting) the results. *See Electric Power Group, LLC, v. Alstom*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“The focus of the asserted claims . . . is on collecting information, analyzing it, and displaying certain results of the collection and analysis.”); *Content Extraction and Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1348 (Fed. Cir. 2014); *Classen*

Immunotherapies Inc. v. Biogen IDEC, 659 F.3d 1057, 1067 (Fed. Cir. 2011) (holding a claim involving “the idea of collecting and comparing known information,” without more, is directed to an abstract idea). The invention of claim 5 requires in essence no more than collecting (i.e., receiving and decoding) and outputting (e.g., encoding and transmitting) data.

Moreover, Appellant has not provided explanation contrary to the Examiner’s findings that the claims are a fundamental economic practice or activity (Final Act. 3–4) or adequately shown the claims are not directed to an abstract idea. We are persuaded that the claims are “directed to” a fundamental economic practice, in that it is much like the concept of intermediated settlement in *Alice* and the concept of using a POS terminal to transmit transaction-related information and to process payments in *Inventor Holdings, LLC v. Bed Bath & Beyond Inc.*, 123 F.Supp.3d 557, 560 (D. Del. 2015), *aff’d*, 643 F. App’x 1014 (Fed. Cir. 2016). *See also Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (explaining claims directed to “the mere formation and manipulation of economic relations” and “the performance of certain financial transactions” have been held to involve abstract ideas).

We are also not persuaded of error by Appellant’s contention “the Examiner characterizes the claims at an unreasonably high level of abstraction that is untethered from the language of the claims.” Reply Br. 3. The Examiner found the “claims are essentially directed to the concept of using a mobile device . . . to accomplish a purchase transaction” at page 3 of the Final Action. However, Appellant’s contention such characterization is at an unreasonably high level of abstraction was presented for the first time

in the Reply Brief and such argument is therefore waived. *Optivus Tech., Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (holding an argument raised for the first time in the reply brief that could have been raised in the opening brief is waived); *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) (“Nor is the reply brief an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not.”).

Furthermore, even if timely presented, such argument is not persuasive of Examiner error. As discussed above, the Examiner finds the claims are directed to the abstract idea of using a mobile device to accomplish a purchase transaction. Final Act. 5. The Court found in *Alice* that it need not labor to delimit the precise contours of the “abstract ideas” category in that case. *See Alice*, 134 S. Ct. at 2357. We note that “an abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). Appellant fails to provide sufficient evidence or argument to persuade us the Examiner’s characterization is overly broad.

Further, to the extent claim 5 requires identifying, encoding, transmitting, receiving and decoding information, individually abstract ideas, we note merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp v. Nintendo*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea ... to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. IATRIC Sys., Inc.*, 839 F.3d 1089, 1094 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Thus, we find no error in the Examiner's finding that the claims are directed to an abstract idea.

Step Two of Alice/Mayo Test

We agree with the Examiner that the claim limitations, when analyzed individually and as an ordered combination, do not amount to significantly more than the abstract idea of using a mobile phone/computing device to accomplish a purchase transaction which includes receipt and transmission of transaction data. We are not persuaded by Appellant's argument how the various steps are performed and, in particular, the use of an acoustic signal to convey payment account information transforms the claims to something more than the abstract idea. *See App. Br. 8.*

The claims are not directed to improvements to vendor transaction systems and point-of-sale (POS) terminals and thus are not rooted in computer technology. Instead, the POS terminals are used in their well-understood, routine, and conventional manner. Appellant's Specification acknowledges POS terminals are known in the prior art to decode user account information. Spec. ¶ 2. The Specification further describes that the computational system used in embodiments of the disclosed vendor transaction system would have been understood by one skilled in the art as being constructed "from various electronic components, including one or more general purpose microprocessors." Spec. ¶ 40. Thus, many general purpose processors or computers available at the time the application was filed could have been used to perform the claimed steps. Simply using a computer to do what a person could do manually does not add significantly more to the abstract idea. *See Bancorp Servs.*, 687 F.3d 1266, 1279 (Fed. Cir. 2012) ("[T]he computer simply performs more efficiently what could

otherwise be accomplished manually.”); *Alice*, 134 S. Ct. at 2357–58 (holding the introduction of a computer or processor to implement an abstract idea is not a patentable application of the abstract idea).

Although the claimed subject matter invokes the use of an automated information system (i.e., computer), the functions performed by the system in carrying out the recited steps are conventional, well-understood, and do not go beyond those of a general purpose computer. Therefore, the claimed subject matter merely recites the performance of a business practice and it is not necessarily rooted in computer technology. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1371, 1362 (Fed. Cir. 2015) cert. denied, 136 S. Ct. 701 (2015) (concluding a “[m]ethod of pricing a product for sale” and “apparatus for use in electronic commerce” relate to the concept of “offer based pricing” similar to other fundamental economic concepts found to be abstract ideas). Thus, we agree with the Examiner that the elements of the independent claims do not amount to “significantly more” than the abstract idea of using conventional elements (e.g., a general purpose computer system) to accomplish a purchase transaction. *See* Final Act. 5–6. Therefore, these elements do not add any meaningful limitations beyond generally linking the abstract idea to the particular technological environment. *OIP Techs.*, 788 F.3d at 1362.³

³ Considerations for determining whether a claim with additional elements amounts to “significantly more” than the judicial exception itself include improvements to another technology or technical field (*Alice*, 134 S. Ct. at 2359 (citing *Diamond*, 450 U.S. at 177–78)); adding a specific limitation other than what is well-understood, routine, and conventional in the field, or adding unconventional steps that confine the claim to a particular useful application (*Mayo*, 132 S. Ct. at 1299, 1302); or other meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment (*Alice*, 134 S. Ct. at 2360). *See, e.g., Intellectual*

Furthermore, in the absence of sufficient evidence or argument, we are not persuaded the use of acoustic signals improves the functionality of electronic transaction systems. Mere attorney argument and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977); *see also* 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). Instead, in the absence of evidence to the contrary, the use of acoustic signals in a purchase transaction amounts to no more than what is well-understood, routine, and conventional in the field and/or insignificant limitations generally linking the use of the abstract idea to a particular technologic environment. *See Alice*, 134 S. Ct. at 2360 (holding that claims requiring use of a “data processing system,” “communications controller,” and “data storage unit” did not offer “meaningful limitations beyond generally linking the use of the method to a particular technological environment.”)

Still further, the fact that the claims do not tie up all ways of determining the effectiveness of a promotion, even if true, does not necessarily mean the claims are patentable because “[w]hile preemption may

Ventures I LLC v. Capital One Bank (USA), 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“[M]erely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea.”).

signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Moreover, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *OIP Techs.*, 788 F.3d at 1379.

REJECTION UNDER 35 U.S.C. § 103(A)

The Examiner finds Labrou’s variation 4-1 using acoustic communication between mobile phone 104 and POS 103 as depicted in the sequence diagram of Figure 11, the transmission of T-Info transaction billing information (including transaction ID, the amount, and the POS ID) from the POS to the customer’s phone (Labrou ¶¶ 120, 131), and the return of C-View message 1102 approving the transaction (Labrou ¶ 129), wherein the C-View message includes a “time stamp, . . . transaction ID, the account, and/or the POS ID” (Labrou ¶ 114) teaches or suggests the disputed receiving step. Final Act. 8, 10. The Examiner further finds Labrou’s encryption of T-info (transaction billing information) via an acoustic signal and decoding at the POS teaches or suggests decoding the second dataset including payment instructions to regenerate the second dataset. Final Act. 8, 10.

Appellant contends the disputed receiving and decoding limitations of claim 5 correspond to the generating and encoding language of claim 1 such that arguments presented in connection with claim 1 (the rejection of which under 35 U.S.C. § 103(a) has been withdrawn) also apply to claim 5. App. Br. 11. In connection with claim 1 Appellant contends “the customer

message in the cited portions of Labrou is in response to the transaction information displayed on a *monitor*, not ‘in response to the regenerated first dataset’ that is provided by ‘decoding the first acoustic signal’ on the *mobile device*” as required by independent claim 1. App. Br. 10.

The Examiner responds, finding “the limitations [of claims 1 and 5] may be similar but they are not identical and have different requirements.” Ans. 7. Addressing the receipt of payment instructions recited by claim 5 (versus the generating step of claim 1), the Examiner finds Labrou’s T-Info, including an encoded dataset of billing information, is received and decoded by a customer’s phone thereby teaching or suggesting the disputed receiving step of claim 5. Ans. 8. The Examiner further finds Labrou’s sequence diagram of Figure 7 depicts “another short range acoustic communication signal ‘602’ (hashed line), which is encoded with a second dataset including payment account information of the customer to complete a purchase transaction, [and] is transmitted by the customer phone 104 and received by the merchant point-of-sale (POS) device” further teaching or suggesting the disputed receiving and decoding steps of claim 5. *Id.* The Examiner also finds the sequence diagram of Figure 11 depicting Labrou’s two-way communication “with acoustic signal ‘T-info’ (1101) (hashed line) received by customer phone 104 from the POS, and acoustic signal 1102 (hashed line) sent by the customer phone 104 in response to the receipt and decoding of the ‘T-info’ (1101) billing information signal sent by the POS” still further teaches or suggests the disputed limitations of claim 5. *Id.*

Appellant replies, rather than account information input by a user in response to the transmitted first acoustic signal, Labrou’s user approves a transaction by entering only a PIN. Reply Br. 6. Appellant further argues

“the message in Labrou is sent via the cellular network, and does not ‘receiv[e] at the acoustic receiver a second acoustic signal encoded with a second dataset comprising payment instructions’ as in claim 5.” *Id.*

Appellant also argues Labrou’s customer selection of a payment account is not in response to the transmitted first acoustic signal as required but, instead is “in response to the [POS] device transaction information (T-info) on a *monitor*.” Reply Br. 6–7. Finally, in connection with Labrou’s Figure 11, Appellant argues “a customer selecting ok in Labrou is not the same as ‘payment account information’ in claim 5.” Reply Br. 7.

Appellant’s contentions are not persuasive of Examiner error. Labrou’s T-Info is described as “as short-range communication **210** [from POS 103] to the phone **104** . . . that contains the transaction ID, the amount and the POS ID.” Labrou ¶ 120. Labrou further discloses the short-range communication methods to include, *inter alia*, audio communication between mobile device 104 and POS 103. Labrou ¶ 21. Thus, Labrou teaches or suggests the claimed first acoustic signal. Labrou’s sequence diagram of Figure 9 depicts T-Info transmitted by POS 103 which is received by Customer 104, the Customer entering T-Info and a PIN, and C-View sent using short-range communications to POS 103. Labrou further discloses, in addition to entering a PIN,

The customer selects a payment account. The mobile POS application **109** locally via a short-range communication **210** sends a UPTF message to the merchant **103** using the preferred local medium **210**. The message can be a complete C-View **402**, where the encrypted portion **408** contains the time stamp, a nonce, and optionally contains the transaction ID, *the account*, and/or the POS ID.

Labrou ¶ 114 (emphasis added). Thus, in addition to providing a PIN, Labrou discloses selecting account information thereby teaching or suggesting the POS receiving payment account information input by the user in response to the T-Info. Accordingly, we agree with the Examiner that Labrou teaches or suggests the disputed receiving step.

We are also not persuaded Appellant the message in Labrou is necessarily sent via the cellular network. *See* Reply Br. 6. Labrou discloses use of audio for short-range communication between mobile device 104 and POS 103 (Labrou ¶ 21) teaching or suggesting the disputed first and second acoustic signals.

We are further unpersuaded of Examiner error by Appellant's argument that Labrou's customer payment is in response to transaction information displayed by the POS rather than in response to the transmitted first acoustic signal. Although possibly true of embodiments such as depicted in the sequence diagram of Figure 7, others of Labrou's sequence diagrams depict T-Info transmitted by the POS to the customer with the customer responding by entering a PIN and account information so as to transmit the C-View to the POS. *See, e.g.*, Labrou's Figs. 8, 9, and 11.

Finally, we are unpersuaded by Appellant's argument that a customer selecting "ok" does not teach or suggest the payment account information of claim 5. As explained, in addition to an "ok" or entry of a PIN, Labrou teaches or suggests providing account information. Furthermore, Appellant fails to explain what features of payment account information distinguish that information from the disputed "ok", the latter suggesting that the user's account may be used to complete a transaction. In contrast, Appellant's

Specification discloses “[t]he message 603 includes payment information, such as the customer’s name, credit card account number, and *security code*.” Spec. ¶ 47 (emphasis added). Labrou’s PIN (i.e., personal identification number) is used “to execute a mobile phone POS authenticable transaction as an authenticable mobile POS 104” (Labrou ¶ 77) thereby also functioning as Appellant’s security code. Thus, in the absence of evidence to the contrary and under a broad but reasonable interpretation, the argued PIN and/or “ok” teaches or suggests the disputed payment account information.

For the reason discussed above, Appellant’s arguments are unpersuasive of reversible Examiner error. Accordingly we the rejection of claim 5 under 35 U.S.C. § 103(a) and, for the same reasons, the rejection of independent claim 12 and of dependent claims 13 and 14 which are not argued separately with particularity.

DECISION

The Examiner’s rejections of claims 1–3, 5, 8–10, and 12–14 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED